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**Journal of
Emerging
Economies and
Islamic Research**

www.jeeir.com

Why Islamic finance is different? A Short Review of Islamic Jurisprudential Interpretation about Usury, Ambiguity (*Gharar*), Gambling (*Maysir*) and Exploitative Commercial Arbitrage (*Talaqi al-Rukban*)

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Abstract:

Unlike the traditional Finance, Islamic finance must observe the teachings of *Shari'ah* whose basic teaching cannot be violated at any point in time. These basic teachings constitute the core element of the faiths that are best described as *maqasid al-shari'ah*. While prohibiting *Riba*, *Gharar*, *Maysir*, Islam promotes *maslahah* by protecting the interests and benefits of all parties involved in the market. This paper emphasizes on the main underlying causes (*'Illah*) for the prohibition of these on the basis of Islamic and socio-economic point of views. This paper is based on secondary sources such as classical books, articles etc. There is no difference of opinion among scholars that *Riba*, *Gharar*, *Maysir* is clearly prohibited by both *Quran* and the *Sunnah*. However, Questions continue to be raised about their meanings and implications because of the diverse applications in commercial transactions (*Mu'malat*). This paper is a humble attempt to clarify the meaning and implications of these terms.

Key words: Traditional economics, Islamic Finance, Islamic Jurisprudence, Usury, Ambiguity (*Gharar*), Gambling (*Maysir*) and *Talaqi al-Rukban*.

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1. Introduction:

Islamic economic system is a rules-based system originated for the preservation of the property rights and sanctity of contracts. Beginning on the notion of the property as a sacred trust, the Shari'ah ensures its protection from any exploitation through unjust and unfair dealings. The prohibition of usury (*Riba*), *Gharar* and other form of exploitation are some of the implications of its core principles. *Riba* (interest) is in fact just a form of *gharar* (uncertainty). *Gharar* (uncertainty) opens the door for speculation, ruthless greed, immorality, and social decay. Both *Riba* (interest) and *Gharar* (uncertainty) result in social harm in the form of inflation, unemployment, volatility, instability, and environmental degradation. Both *Riba* (interest) and *Gharar* (uncertainty) are prohibited under *Shari'ah* as their harm outweighs any benefit, however, *Gharar* (uncertainty) is allowed in instances where the benefit outweighs the harm.

This paper suggests a juridical interpretation of the prohibitions of *ribā*, *gharar* and *maysir* through the outline of reasons ('*Illah*) for the prohibitions of these issues. The main objective of this study is to review the fundamental reasons ('*Illah*) for prohibitions: *Riba*, *Gharar*, *Maysir* and *Talaqqi Al Rukban* and why these are intolerable by *Shariah*. This paper is divided into two major parts. To discuss these issues, Section A examines the theoretical understandings of the key term '*Illah* and the Islamic rulings i.e the underlying causes for prohibition of *Riba*, *gharar*, *Maysir* and *Talaqqi al-Rukban* issues are explained from section B to E.

Section A: Theoretical Underpinning of '*Illah*-the underlying causes:

2.1 '*Illah*:

This is perhaps the most important of all the requirements of *qiyas*. '*Illah* has been variously defined by the *ulema* of *usul*. According to the majority, it is an attribute of the *asl* which is constant and evident and bears a proper (*munasib*) relationship to the law of the text (*hukm*). It may be a fact, a circumstance, or a consideration which the Lawgiver has contemplated in issuing a *hukm*. In the works of *usul*, the '*illah* is alternatively referred to as *manat al-hukm* (i.e. the cause of the *hukm*), the sign of the *hukm* (*amarah al-hukm*), and *sabab*. Literally, *Illah* means an accident ('arid) by which the quality of an object changes from one condition to another when it applies to it, as change from health to illness, and from strength to weakness. In other words, it refers to a cause of change in the existing condition of a thing.

Technically,

1. It means the idea or ground (*ma'na*) which demands (*yaqtadt*) or determines the rule of law.
2. That which stands as a sign ('*alam*) for the rule of the text.
3. Sadr (1957) defines it as the rule of law, i.e it is an indicator to the existence of an injunction.
4. That which is effective in the rule of law, i.e that which causes the existence of the rule of law.
5. That which serves as a motive for the rule of law, not by way of obligations (*Ijab*), but being a wisdom (*hikmah*) or public good (*maslalah*) designed by lawgiver while giving the rule of law.

2.2 Conditions of '*Illah*:

Some *ulema* have attached numerous conditions to the '*illah*, but most of these are controversial and may be summarized in the following five:

2.2.1 *Illah* should be a constant and stable attribute:

'*illah* must be a constant attribute (*mundabit*) which is applicable to all cases without being affected by differences of persons, time, place and circumstances. The Malikis and the Hanbalis, however, do not

agree to this requirement as they maintain that the 'illah need not be constant, and that it is sufficient if the 'illah bears a proper or reasonable relationship to the hukm.

2.2.2 As already stated, the effective cause on which analogy is based must also be evident (*zahir*):

Hidden phenomena such as intention, goodwill, consent, etc., which are not clearly ascertainable may not constitute the 'illah of analogy. The general rule is that the 'illah must be definite and perceptible to the senses. For example, since the consent of parties to a contract is imperceptible in its nature, the law proceeds upon the act of offer and acceptance.

2.2.3 The third condition of 'illah is that it must be a proper attribute (*al-wasf al-munasib*) in that it bears a proper and reasonable relationship to the law of the text (*hukm*):

This relationship is *munasib* when it serves to achieve the objective (*hikmah*) of the Lawgiver, which is to benefit the people and to protect them against harm. For example, killing is a proper ground on which to exclude an heir from inheritance.

2.2.4 The 'illah must be 'transient' (*muta'addi*), that is, an objective quality which is transferable to other cases:

For analogy cannot be constructed on a 'illah which is confined to the original case only. As the Hanafis explain, the very essence of 'illah, as much as that of qiyas in general, is its capability of extension to new cases, which means that the 'illah must be a transferable attribute.

2.2.5 And finally, the effective cause must not be an attribute which runs counter to, or seeks to alter, the law of the text.

Section-B: The underlying causes ('Illah) for Prohibition of Riba:

3.1 The meaning of Riba:

The word *Riba* as a noun literally means an increase, and as a root, it means the process of increasing. *Riba* has been understood throughout Muslim history as being equivalent to interest paid on a loan. The prohibition of *riba* essentially implies that the fixing in advance of a positive return on a loan as a reward for waiting is not permitted by the *Shariah*. It makes no difference whether the return is big or small, fixed or variable, an absolute amount to be paid in advance or on maturity, or a gift or service to be received as a condition for the loan. It also makes no difference whether the loan was taken for consumption or business purposes.

Technically, In its basic meaning, *Riba* can be defined as 'anything (big or small), pecuniary or non-pecuniary, in excess of the principal in a loan that must be paid by the borrower to the lender along with the principal as a *condition*, (stipulated or by custom), of the loan or for an extension in its maturity'¹ Throughout history, there has been near consensus among Islamic jurists that bank interest is covered by this prohibition.

¹ For some other definitions of *riba* and discussions thereupon, Islamic Research & Training Institute(1995),pp.77-84

3.2 Kinds of Riba:

3.2.1 Riba al-Nasi'ah (Riba on credit):

The term *nasi'ah* comes from the root *nasa'a* which means to postpone, defer, or wait, and refers to the time that is allowed to the borrower to repay the loan in return for the 'addition' or the 'premium'. The first of these is *riba al-nasi'ah*, which stands for the increase in lieu of delay or postponement of payment of a due debt. It may be mentioned that the debt may have arisen because of a loan contract, in which case it will be covered by *riba al-nasa'* mentioned above. On the other hand, the debt may arise from a sales contract in which the payment has been deferred. A third kind of debt may arise as a compensation for certain rights: examples of this include dower money due to a wife if not paid to her at the time of marriage, and blood money as a compensation for unintentional killing. A modern-day example would be payments due in libel cases. All these are covered by the term *riba al-nasi'ah*. Once the amount has been determined, the debtor cannot be asked for any increase if the payment is delayed.

3.2.2 Riba Al-Fadl (Riba in Cash):

The second subsidiary meaning relates to *riba al-fadl*, which arises in barter exchange of commodities. In this context, *riba al-fadl* refers to the excess taken by one of the trading parties while trading in any of the six commodities mentioned in a well-known authentic *hadith*, which says: 'Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, like for like, payment being made hand by hand. If anyone gives more or asks for more, he has dealt in *riba*. The receiver and giver are equally guilty' (Sahih Muslim). The discussion of *riba al-fadl* has arisen from this *hadith*, requiring that if gold, silver, wheat, barley, dates or salt are exchanged against themselves they should be exchanged spot and be equal and alike. The scope of *riba al-fadl* is much wider in a barter economy than in modern-day market economies. One important application in modern times is the trade in currencies. Currency exchange in Islamic systems is governed by the rules of *bay' al-sarf*, which require that exchange of currencies must be hand-to-hand (that is, no future trading) and at current market exchange rates.

3.3 Riba in The Holy Qur'an:

3.3.1 First Revelation (Surah al-Rum, verse 39):

وَمَا أَتَيْتُم مِّن رَّبٍّ لِّرَبِّوٓا۟ فِي۟ أَمْوَالِ النَّاسِ فَلَا يَرِيٓوٓا۟ عِندَ اللّٰهِ وَمَا
ءَاتَيْتُم مِّن زَكٰوٰتٍ تُرِيْدُوْنَ وَجْهَ اللّٰهِ فَأُولٰٓئِكَ هُمُ الْمُضْعِفُوْنَ

"That which you give as *riba* to increase the peoples' wealth increases not with God; but that which you give in charity, seeking the goodwill of God, multiplies manifold. (30:39)."

3.3.2 Second Revelation (Surah al-Nisa', verse 161):

"And for their taking *riba* even though it was forbidden for them, and their wrongful appropriation of other peoples' property, We have prepared for those among them who reject faith a grievous punishment. (4:161)."

3.3.3 Third Revelation (*Surah Al 'Imran*, verses 130-2):

"O believers, take not doubled and redoubled riba, and fear God so that you may prosper. Fear the fire which has been prepared for those who reject faith, and obey God and the Prophet so that you may receive mercy. (3:130-2)."

3.4 *Ahadith for Riba:*

3.4.1 *Riba al-Nasi'ah:*

- i) From Usamah ibn Zayd: The Prophet, peace be on him, said: "There is no *riba* except in nasi'ah [waiting]." (Bukhari, Kitab al-Buyu, Bab Bay al-dinari bi al-dinar nasa'an; also Muslim and Musnad Ahmad) "There is no riba in hand-to-hand [spot] transactions."²
- ii) From Ibn Mas'ud: The Prophet, peace be on him, said: "Even when riba is much, it is bound to end up into paltriness."³

3.4.2 *Riba al-Fadl :*

- i) From Abu Said al-Khudri: The Prophet, peace be on him, said: "Do not sell gold for gold except when it is like for like, and do not increase one over the other; do not sell silver for silver except when it is like for like, and do not increase one over the other; and do not sell what is away [from among these] for what is ready."⁴
- ii) From 'Ubada ibn al-Samit: The Prophet, peace be on him, said: "Gold for gold, silver for silver, wheat for wheat, barley for barley dates for dates, and salt for salt - like for like, equal for equal, and hand-to-hand; if the commodities differ, then you may sell as you wish, provided that the exchange is hand-to-hand."⁵

3.5 *I'llah for the prohibition of Riba:*

Even though there is no explicit statement in the Qur'an and/or Sunnah giving the rationale of prohibiting *riba*, Islamic scholars provide a number of reasons for its prohibition. Siddiqi (2004), for instance, singles out five such reasons:

- i) *Riba* is unfair;
- ii) *Riba* corrupts society;
- iii) *Riba* implies improper appropriation of other people's property;
- iv) *Riba*'s ultimate effect is negative growth;
- v) *Riba* demeans and diminishes human personality.

The *illah* for the prohibition of *Riba* is discussed broadly below:

3.5.1 It is unfair (*zulm*) both from the lender and borrower point of view:

Among the most important reasons that has been emphasized by most writers is that interest is prohibited because it is unfair (*zulm*). A contract based on interest involves injustice to one of the parties, sometimes to the lender and sometimes to the borrower. The *riba* contract is unjust to the borrower because if

² Muslim, *Kitab al-Musaqat*, Bab bay'i al-ta'ami mithlan bi mithlin; also in Nasa'i

³ Ibn Majah, *Kitab al-Tijarat*, Bab al-taghlizi fi al-riba; also in Musnad Ahmad

⁴ Bukhari, *Kitab al-Buyu*, Bab bay i al-fiddati bi al-fiddah; also Muslim, Tirmidhi, Nasa'i and Musnad Ahmad

⁵ Muslim, *Kitab al-Musaqat*, Bab al-sarfi wa bay'i al-dhahabi bi al-waraq naqdan; also in Tirmidhi

somebody takes a loan and uses it in his business, he may earn a profit or he may end up with a loss. Now, in the case of loss, the person using that money (let us call him the entrepreneur) loses his labour. Now, let us see below how sometimes interest contracts can be unjust to the lender. Many people do not realize that a *riba* contract can be unjust to the lender and not always so to the borrower. In most of the underdeveloped countries perhaps it is more unjust to the lender.

i) Unequal exchange of the same commodity:

By prohibiting *Riba Al-Fadl* i.e unequal exchange of the same commodity, Islam has in fact encouraged the use of cash money. The Prophet (s.a.w.s) had instructed Bilal (r.a.t.a) to sell two measures of dates for money and then purchase superior ones with that money. Thus, the ahadith relating to *riba* seek to promote money as medium of exchange in the economy. In barter transaction, if the same commodity is exchanged it is likely that a party with ability to judge the difference in quality will exploit the ignorance of less knowledge party in giving him less than the real value of the commodity. Therefore the lawgiver has safeguarded him against injustice and exploitation by stipulating that the exchange should be equal on both sides.

ii) *Riba* is prohibited for exploitation and injustice:

It might be argued that the rationale for the prohibition of *riba* in *al-Qur'an* is to establish an economic system from which all forms of injustice and exploitation are eliminated, in particular, the injustice of the financiers being assured of a positive return without putting any effort or sharing in the risk,³⁰ while the entrepreneurs, in spite of their management and hard work, is not assured of such a positive return. The prohibition of *riba* is therefore a way to establish justice between the lenders and borrowers.

iii) *Riba* is security oriented rather than Growth oriented:

The interest based system is security oriented rather than growth oriented. Because of their commitment to pay a pre-determined rate of interest to depositors, banks in their lending operations are most concerned about the safe return of the principle lent, along with the stipulated interest. This leads them to confine their lending to the already established big business houses or such parties that are in a position to pledge sufficient security. Interest grows exponentially and all other things are subject to low of growth and decay. Thus its conflict with nature is obvious and therefore systems driven by interest can never be efficient.

iv) Incapable of Allocation of funds:

The interest system brings about and effectively maintains a pattern of income distribution which is biased towards wealthy people and large businesses, irrespective of rational economic considerations. An Islamic interest-free financial system supports a just income distribution pattern fairly correlated to economic efficiency, productivity and actual factors contributions to the total value added. On the other hand small entrepreneurs even with bright new ideas, carefully studied projects with prospects of high returns and possible positive contribution to the total value added will be deprived of finance or may obtain much less than their requirements. Hence they have much less chance to grow their activities and their incomes.

Section C: The underlying causes ('Illah) for Prohibition of *Gharar*:

4.1 *Gharar*:

Gharar is one of the major causes of the invalidity of a contract. It is an external prohibited attribute that invalidates the contracts. Literally, *Gharar* means risk or hazard. *Tagrir* being the verbal noun of *gharar* is to unknowingly expose oneself or one's property to jeopardy. It includes such elements as doubt, suspicion, uncertain conditions, the absolute lack of knowledge about in determinability of the basic elements of the subject matter.

Accordingly, Fiqh (Islamic Jurisprudence) scholars such as Kamali (2000) has defined *gharar* as ignorance or lack of knowledge pertaining to the material attributes of the terms, the subject matter of a sale, as well as the availability and existence thereof. Ibn Rushd (1997), on the other hand, defines *gharar* as the inequality in bargaining power that arises from ignorance or lack of knowledge pertaining to an aspect, quality, subject matter or feature of the contract. Thus to Ibn Rushud, *gharar* is the effect of the inequality of bargaining power rather than condition of lack of knowledge.

More recently, EI-Gamal (2006) suggests that *gharar* generally encompasses some form of incomplete information and/or deception, as well as risk and uncertainty intrinsic to the objects of contract. Indeed, few scholars have felt that the need to define *gharar* or outlines its ambit precisely. Whilst Dhareer (1997) suggests that *gharar* is a concept that does not attach to any defined circumstance or transaction, the lack or precise ambit or definitions contributes to the controversy over the effect it has on present day transaction in Islamic Finance. From the above definitions of *gharar*, the main elements of *gharar* can be observed:

- i) Want of knowledge regarding the existence of the exchanged counter values;
- ii) Want of knowledge regarding the material information of the subject matter, like characteristics of the exchanged counter values, their species, quantities and date of future delivery.
- iii) Control of the parties over the subject matter to be exchanged.

4.2. How is *Gharar* illegalized?

The Quran prohibits all those dealings where the intention is to deceive one of the parties. The Quran states that Muslims should not devour one another's property wrongly.

يٰۤاَيُّهَا الَّذِيْنَ اٰمَنُوْا لَا تَاْكُلُوْا اَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ اِلَّا اَنْتَ كُوْنَ
تَحْكِرَةً عَنْ تَرٰضٍ مِّنْكُمْ وَلَا تَقْتُلُوْا اَنْفُسَكُمْ اِنَّ اللّٰهَ كَانَ بِكُمْ رَحِيْمًا ﴿٢٩﴾

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful."

Al-Quran has prohibited gambling in other verses (*al-Baqarah* 2:219 and *al-Maidah*, 5:93). *Gharar* is a kin of gambling for *gharar* occurs in all sorts of transactions where the subject matter, the price of the two, are not determined and fixed in advance. Such manner is under the suspicion of *gharar*. In addition Prophet (phAbuh) on a many occasion forbade many transactions which included *gharar*. For example, he forbade the sale of what the vendor is not in a position to deliver, the sale of *gharar*, the sale of young still unborn when the mother is not part of sale and the sale of the stallion (Zuhaili, 1984).

4.3 Forms of *Gharar* transactions:

Darir (1987) has given a detailed list of transactions that involve element of *gharar*. *Gharar*, in his view sometimes relates to the form of contract and sometimes to its subject matter.

4.3.1 *Gharar* relating to *sighah* (form) of contract:

i) Two sales in one:

Two sales in one means that a single contract relates to two sales. It is where a seller says to buyer “ I sell you this commodity for hundred dollar on cash and hundred and fifty on credit.” And the buyer accepts it without specifying the price at which he will buy the commodity. The *gharar* inherent in this contract is indeterminacy of the price.

ii) Earnest money (*Arbun*) sale:

It is a sale in which a person buys an item and pays a certain amount of money in advance to the seller on an item and pays a certain amount of money in advance to the seller condition that if the transaction is completed in advance will adjusted and if bargain is cancelled the seller will not return the advance. Here, earnest money is the nature of an option contract. The money is being paid as a consideration to gain time from the selling party. The selling party is reciprocating by restraining himself in exercise of his legal in respect of his property. However, the earnest money cannot be forfeited if the transaction cannot be completed because of the fault of the selling party.

iii) Contingent sale:

It is a contract that is contingent upon a condition e.g “ I sell you my house if A sold his house to me”. The *gharar* work behind this contract is that it is contingent upon happening of an uncertain future event.

iv) Contract effective from future date:

It is a contract which comes into effect at some future date e.g the contract shall be effective from such and such date. The *gharar* contained in such sale according to Darir is possible change in price or other circumstances of the sale which may affect the real consent of the contracting parties when time of performance approaches. Interestingly, this type of sale is valid in the opinion of Imam Ibn Taymiyya.

4.3.2 *Gharar* relating to subject matter of contract:

- i) Uncertainty regarding the genus of the object: It is where a person says to another “ I sell you an item for ten” And does not specify the object of sale.
- ii) Uncertainty regarding the kind of object: Uncertainty and inter determinacy pertains to kind if the seller tells the buyer “ I sell you an animal at such and such price” without indicating the kind of animal.
- iii) Uncertainty regarding attributes of object: It is where the necessary attributes of the object of the sale are not described.
- iv) Uncertainty regarding the quantity of the object: The knowledge of the quantity of is necessary for validity if sale. Thus, to sell a heap of grain haphazardly without reference to its quantity is impermissible.

- v) Uncertainty regarding the specification for the object: *Gharar* relates to specification when things of different entities are sold without specifying one of them in particular such as in the sale of piece of each cloth out of bulk or a sheep out of heard.
- vi) Uncertainty regarding the time of performance.
- vii) Uncertainty regarding the existence of the object.
- viii) Uncertainty regarding delivery of object.

4.4 The reasons for Prohibition of Gharar:

The ban on *gharar* implies that commercial partners should know exactly the counter value that is offered in a transaction. The word '*gharar*' in the Arabic language means risk. It also has the connotation of deception and delusion. Of course, risk can never be totally avoided, certainly not by entrepreneurs, and no productive or commercial activities would be possible without a certain degree of risk and uncertainty. Only conditions of excessive risk have to be avoided (Obaidullah 2005, p. 29). The major reasons for prohibition of *Gharar* are discussed below:

4.4.1 Avoid Fraudulence:

Saleem, M. Y. (2012) explains the main reason for the prohibition of *gharar* is that contracts involving *gharar* are fraudulent. As *Gharar* refers to vagueness in rights and liabilities that can be exploited to deceive people into thinking that they are getting a better deal which in reality is not the case. More frequently such ambiguities in a certain contract are designed to commit fraud and cheat one of the parties.

4.4.2 Chance of Oppression or Injustice:

The prohibition of *gharar* is founded on the rule of justice and fair dealings. The occurrence of *gharar* in any dealing may result in the oppression or injustice and loss of properties to one or even both of the parties, *Gharar* may also infringe the rule of mutual consent. A party's consent to the transaction might be due to his lack of knowledge of material information, and therefore the consent given is not genuine. The outcome of the transaction is not clear to the parties due to the lack of information, thus exposing them to unnecessary risks in business transactions.

4.4.3 Avoid Future dispute:

Another reason for the prohibition of *gharar* is to avoid disputes. If the parties are not fully aware and clear about any material information of the contract, they might be engaged in unexpected financial responsibilities and commitments. This is of course can lead disputes between parties as to the correct and intended consequences of the contract entered into.

4.4.4 Transparency and fairness:

The ban on *Gharar* stands for transparency and fairness. In order to avoid *gharar* the parties to a contract must:

- i) Make sure that both the subject and prices of the sale exist, and that parties are able to deliver.
- ii) Specify the characteristics and the amounts of the counter values.
- iii) Define the quantity, quality and date of future delivery, if any.

4.4.5 Interdependent and conditional contracts:

Contract must not be combined or linked. If the sale price is dependent on a specific event which may or may not be taken place, then major gharar exists. For instance, in a car hire-purchase agreement where we first hire a car for a few years before purchasing it at a stated price, the hire and purchase agreement must be separate and independent from each other.

4.5 Major Gharar in conventional Finance:

There are two conventional finance areas in particular where major gharar occurs: namely, Insurance and Financial derivatives.

- i) With Insurance, there could exist major uncertainty and unfairness to a policyholder who pays premiums for many years and not collect any payout because the insured event never occurs. Or there may be unfairness for the insurer when a policy holder who pays for just one month is given a large payout when the insured event occurs in the following month.
- ii) With derivatives such as future and options for the future delivery of bushel of corn, the object of the sale may not exist at the time is executed. Derivatives product such as forwards, futures and options are rendered controversial due to the existence of *gharar*. In forwards and futures the object of the sale may not exist at the time the contract is concluded. Islam has permitted, under certain conditions, the contract of *salam* where the object of the sale is not in existence. In a *Salam* contract the price is paid in advance and purchaser cannot sell the commodity prior to its possessions. However, contemporary forwards and futures do not satisfy these conditions since both price and goods are delivered in future date.

Section D: The underlying causes (*'Illah*) for Prohibition of *Maysir*:

5.1 *Maysir*:

The word *maisir* is derived from the root '*yasara*', means to become gentle, to draw lots by arrows or '*yasaar*', means affluence because *maisir* brings about profit or *yusr*, that is convenience, ease because it is an earning without toil and exertion or *yasr*, means dividing a thing into a number of shares and distributing them among themselves. Siddiqi(1981) defines Gambling is called *maisir* because those who partake in the games of chance divide the meat of sacrificial animal among themselves.

Gambling or *Maysir* also known as *Qimar* is defined as any activity which involves betting where the winner will take the entire bet and the loser will lose his bet. Gambling or *al-maisir* from Islamic perspective is defined to mean a game of haphazard in all matters particularly a game of chance by means of divinatory arrows. *Maisir* is of various categories. Some of these types of *maisir* are seeking omen or fortune by divinatory arrows, back gammons, chess, lottery and many others.

5.2 Prohibition of Gambling in the Quran:

There are verses from the Qur'an which highlighted the prohibition of gambling and the wisdom behind its prohibition. Allah says:

“They asked the Prophet (S.A.W) about khamr (intoxicants) and games of chance (gambling). Say, in both of them there is great harm although there is some advantage as well in them for men, but their harm is much greater than their advantages.”⁶

In another verse, Allah mentions:

“O ‘ you who believe, verily wine and game of chance, ungodly shrines, and divining devices are abomination of Satan’s work. Avoid them, that your may prosper. Only would Satan sow hatred and strife among you, by wine and games of chance, and turn you aside from, the remembrance of Allah and from prayer. Will you not, therefore abstain from them?”⁷

From the above verses, it is obvious that *maisir* entail great sins and promises petty benefits and that *maisir* is an abominable act of Satan. It is therefore imperative to avoid gambling in order to achieve success and happiness in our lives.

5.3 Prohibition of Gambling in the Sunnah:

The Prophet (S.A. W) said:

“Whoever says to his companion, come let us play a game of haphazard should give alms (as an atonement).”⁸

It connotes that a mere invitation to gambling is such a serious sin as to warrant atonement thereof by charity. What is more the position of a man who indulges in gambling. The Prophet (S.A.W) further said:

“Whoever plays backgammon as if he dyes his hands with the flesh of swine and its blood.”⁹

There is no difference of opinion among the jurists that every sort of gambling is harmful, except betting for horse race and archery which have been declared lawful for persuading for horsemanship archery and preparation for Jihad. This is in line with the *Qur’anic* verse where Allah says:

“Make ready for them all you can of armed force and horses tethered that thereby you may dismay the enemy of Allah and your enemy.”¹⁰

Therefore, it is clear that the prohibition of gambling is not only mentioned in the Qur’an but also supported by the tradition of the Prophet (s.a.w).

⁶ Quran 2:219

⁷ Quran 5:90,91

⁸ Bukhari and Muslim

⁹ Muslim

¹⁰ Qur’an 8:60

5.4 Illah for the Prohibition of Maysir:

Gambling brings about religious, social, moral and economic harm. From the Qura'nic verses that have been discussed before it is clear that gambling entails following evil effects. The main reasons (*Illah*) are described below:

First, gambling distracts those who partake the game from the remembrance of Allah and Prayer. When a gambler sits continuously for hours together, he is so absorbed in it that he forgets everything around him; rather he becomes unconscious of his own self. He forgets his household and family's responsibilities. How then, can he take care of his prayer?

Second, it sows the seeds of disputes and quarrels among the gamblers which ultimately assume the shape of enmity and hatred among them. This point is made clear in the following verse:

"Only Satan sow hatred and strife among you, by wine and games of chance and turn you aside from the remembrance of Allah and from Prayer; Will you not, therefore abstain from them?"

Third, the sin of gambling is greater than its benefit. The verse 2: 219 enunciated two invaluable principles namely:

1. Dispelling mischief is precedent to acquiring benefits and,
2. The commission of lesser evil is obligatory when the commission of either of the two evils is necessarily essential.

Fourth, it corrupts morals making people sluggish in waiting for providence by whimsical means and giving up activities essential for making earnings viz agriculture, industry, business which are the foundation stone of social living and human prosperity and happiness in this mundane life.

Fifth, it enslaves the gambler who becomes a mute slave in the hands of gambling and seldom succeeds in abandoning it. When he earns some benefit, his greed for gambling increases and when he losses the game, even then his interest in the games of chance increase to make good the loss. In this way, he remains awfully engaged in gambling till he becomes a destitute.

Sixth, it brings about a sudden havoc in the countries due to sheer waste of wealth by losing the game. Finally, it usurps the wealth of towns and transfers it to the band of the mischief mongers within and outside the country. Thus, gambling is a root cause of innumerable economic evils reducing many rich people to destitution and ultimately forcing them to commit suicide.

Section E: The underlying causes ('Illah) for Prohibition of Talaqi-al-Rukban:

6.1 Talaqqi al-Rukban:

There are at least two forms of trade exploitation which have attracted muslim jurists to debate. One business transaction concluded between the towns known as '*Talaqqi al-rukban*'. Tradesman and the rural tradesman outside the town conduct such transaction. *Talaqqi al-rukban* is a kind of monopolistic collusion and an illegal practice (particularly an exploitative commercial arbitrage) in which a city dweller purchases goods from a Bedouin (desert dweller) or a villager at a far lower price before the latter enters the market. Thereafter, the buyer brings those goods into the market and offers them for sale at much higher prices. In so doing, the town dweller takes advantage of the Bedouin's or villager's

ignorance or unawareness of the market price. Before the advent of Islam, people used to practice this form of manipulative trade by buying off full caravan loads before the caravan arrives in the market place. Shari'a prohibited this exploitative act.

6.2 Illah for prohibition of 'Talaqqi al-Rukban':

Muslim jurists are unanimous to the prohibition of exploitation in the '*Talaqqi al-rukban*', but there are different opinions among them as regards to the reason why meeting or transaction is prohibited (Saleem, 2010). At least two reasons are given:

Firstly: Monopolized by certain group of traders who has intercepted the goods from tradesmen out of town and brought them at a low price. They might then sell to the town people at an above average market price and justify it be and thy representing to the people that they too had paid a higher price the public. Ibn Rushd (1968) illustrated this view as the view of Maliki School.

Secondly, from the point of view of the rural tradesman, it may be inferred that they might be deceived by the urban tradesman, who might represent to them that their goods had a low market value and thus induce them to sell their goods cheaply. Ibn Qudamah, (1983) Explains the reason is given by the Shafi and Hanbali schools. According to Maliki school, the remedy should be granted to the people or public of the town by forcing the buyer i.e the urban tradesman, to sell the goods, bought in this way, at the same price at which he bought them the tradesmen from out of town. The objective of the remedy is to teach the buyer a lesson, in the hope that he will discipline his commercial activities on the reasonable ethics not for excessive profit.

Thirdly, whatever differences of opinions may be, the main objective of the prohibition is to eradicate all roots of exploitation. The seller's ignorance about the market price in town, and the interception of the goods somewhere outside the town, are two pre-requisite to constitute a form of exploitation in the act of *talaqqi al-rukban*. It does not constitute the exploitation and the prohibition is no longer applicable, if the seller having knowledge of the market price, still proceeds with the contract or in a bigger deal in a trade pact with the trader from town. In such a situation it can be assumed that he has agreed to the price which has been offered to him, although it is below the market value of the goods, for the element of exploitation them disappears.

Fourthly, Salem (2012) argues that the reasons for the prohibition could be the existence of unnecessary intermediaries between seller and potential buyers. The unnecessary interferences result in increasing prices for a genuine purchaser and a profit to a third party whose intervention is not needed. Third party intervention neither adds value to the item sold nor makes it more accessible to people.

7. Conclusion:

In conclusion *Riba*, *Gharar*, *Maysir* with regard to classical exposition and the modern legislation brings to light a reemergence of the old dilemma of the dichotomy between practice and theory of the law, Muslims who regard not only the Quran but also sunnah as a source whose injunctions and exhortations should be followed to the letter, both in matters of worship and in matters of *muamalat*, in social relationships, want to see the bans of *gharar*, *maysir* and *riba* rigorously maintained. However, it is always a question of interpretation which present day phenomena would fall under such a ban. Interpretations differ widely, the more so as there is also the additional question of whether the relevant *ahadith* can really regarded as authentic. This is why, it is very urgent to study more on the '*illah* for the prohibition of all these illegal matters in Islam. To recapitulate, it can be said that after the worldwide recession in 2007 which was happened mainly because of excessive speculations and too much debt

driven economy, it is now evident that the core values of Islamic thoughts in prohibition in *riba*, *gharar*, *maysir* and other exploitative are impeccable not only from the Islamic point of view but also from the socio-economic point of view.

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